IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

D.B. Civil Misc.(Writ)Application No.13/2006

D.B. Civil Contempt Petition No.47/2006

M/s. Nakoda International
Vs.
Union of India & Ors.

Date of Order :: 04-04-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI GOPAL KRISHAN VYAS

Mr. Vikas Balia, for the petitioner.
Mr. V.K. Mathur, for Union of India.

D.B. Civil Writ Petition No.7102/2005 was disposed of by order dated 12.1.2006 with consent of the parties in the following terms:

> "Without going into the controversy involved, our attention was drawn to para 13 of the reply of the respondents wherein it has been stated that after paying differential duty of the consignment which comes to Rs.8,79,014/- the petitioner may take release of the goods.
>
> Counsel for the petitioner states that the petition may be disposed of in the light of the stand of the respondents. He further states that he will advise the petitioner to approach the Deputy Commissioner of Customs, ICD, Jodhpur for release of the seized goods. He submits that the respondent authorities may be directed to complete the assessment and determine petitioner's final liability at the earliest. Shri Vineet Kumar Mathur, counsel for the respondents states that this will be done as early as possible.
>
> It is clarified that the release will be provisional and subject to determination of final liability."

An application registered as Civil Misc. (Writ) Application No.13/2006 has been filed on behalf of the Custom Department seeking clarification of the expression "provisional release" in the aforesaid order. The application came to be filed after the writ petitioner, M/s. Nakoda International, filed application for initiating contempt proceedings when the Custom Department through the Assistant Commissioner, Customs, Jodhpur vide order dated 13.2.2006 asked the writ petitioner to furnish bond for the sum of Rs.59,11,904/- and bank guarantee for a sum of Rs.23,56,692/- for taking clearance of the goods. Case of the writ petitioner is that it has paid the differential duty of Rs.8,79,014/- as per the demand and order of this Court and insistence on submission of bond and bank guarantee is illegal and beyond the terms of the order. Insistence on submission of bond and bank guarantee as a pre-condition for release of the seized goods amounts to disobedience of the Court's order and contempt of Court. Case of the Department on the other hand is that the release as ordered by this Court being provisional and subject to determination of final liability, the writ petitioner cannot refuse to submit bond and bank guarantee to cover the amount of penalty and fine leviable under the Customs Act and the letter dated 13.2.2006(supra) asking the writ petitioner to submit bond/guarantee is in accordance with the

order of this Court.

At this stage, it may be mentioned that the controversy in the writ petition related to seizure of Titanium Dioxide which was imported by the writ petitioner as Sodium Sulphate. It is not in dispute that Titanium Dioxide attracts a higher rate of duty than Sodium Sulphate. According to the Department, the mis-description of the goods was with a view to evade duty and the importer i.e. the writ petitioner is liable to pay not only differential duty but also penalty or fine.

From perusal of the extracted part of the order of this Court dated 12.1.2006, it is manifest that the Department gave an option to the writ petitioner to pay the amount of difference of duty and get the goods released. The petitioner accepted the offer and without going into the gamut of dispute agreed to pay the amount but this does not mean that payment was in full satisfaction of the liability. As indicated above, the goods was imported declaring it Sodium Sulphate but it was actually Titanium Dioxide. There was thus an apparent attempt to evade duty which prima facie brings into play the provisions relating to penalty under Section 112 of the Customs Act or fine under Section 125 besides duty payable on the goods as Titanium Dioxide. The order of this Court made it

clear that the release was subject to final determination of liability.

The submission of the writ petitioner is that the liability having been provisionally assessed, unless final assessment is made, there is no occasion to demand bond or bank guarantee to cover the amount of penalty or fine. The definite case of the Department is that whatever has been paid by the writ petitioner is towards duty. According to the Department, the total duty payable on the consignment comes to Rs.50,00,407/- against which the petitioner has paid Rs.41,79,014/-. According to the Department, if the goods are released unconditionally, it would be difficult to recover the amount of penalty which may be levied under Section 112 of the Customs Act. Section 112 of the Act provides for penalty for improper importation of goods at the rates mentioned therein. There being a primafacie case of improper import of goods, the writ petitioner cannot escape the imposition of penalty. Thus, we are of the view that in order to protect the revenue, the department is well within its jurisdiction to insist on submission of the bond and bank guarantee. The Court in fact had made it clear that release would be provisional and subject to final determination of liability. The writ petitioner cannot claim unconditional release of the goods. No action therefore, can be initiated

against the concerned officials for contempt.

With these observations, both the misc. application and contempt petition are disposed of.

It is clarified that we have gone into the correctness of the amounts in respect of bond and guarantee as mentioned in the impugned letter dated 13.2.2006(supra).

[GOPAL KRISHAN VYAS],J. **[S.N.JHA],CJ.**

Praveen